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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	No. CR 13-452-JO
)	
Plaintiff,)	
)	
vs.)	MOTION TO SUPPRESS
)	EVIDENCE AND STATEMENTS
OMAR MARTINEZ-RODRIGUEZ)	
)	(Evidentiary Hearing Scheduled for
)	January 6, 2014 at 10:00 a.m.)
Defendant.)	

The defendant, through his attorneys, Ellen C. Pitcher and Alison M. Clark, respectfully moves for an order suppressing evidence obtained beginning September 18 and culminating on September 25, 2013, with the stop of defendant Omar Martinez-Rodriguez in Marion County, Oregon. The defendant further moves for an order suppressing the subsequent warrantless search and seizure of evidence from his vehicle

and person, as well as any statements obtained from him, as these are in violation of defendant's rights under the United States Constitution, Amendment IV.

Background

On September 25, 2103, a car driven by defendant Omar Martinez-Rodriguez was stopped by law enforcement officials with the Clackamas County Sheriffs Office in Salem, Oregon, which is located in Marion County, Oregon. The alleged reason for the stop was a perceived traffic violation. After obtaining Mr. Martinez-Rodriguez's Mexican driver's license, a waiting canine was brought to the vehicle, and sniffed in and around the vehicle. Believing that the canine had alerted to drugs in the vehicle, Detective Mathew Fromme asked Mr. Martinez-Rodriguez for permission in search his vehicle, which was denied.

Officers proceeded to search the vehicle, locating packages of suspected controlled substances, which were later confirmed to be methamphetamine. Mr. Martinez-Rodriguez was taken into custody and charged in Marion County with controlled substance offenses. On October 1, 2013, Mr. Martinez-Rodriguez was indicted federally with one count of Possession with Intent to Distribute Methamphetamine; he appeared for arraignment in federal court on October 7, 2013, entering a Not Guilty plea.

Special Assistant United States Attorney Steven Mygrant provided partial discovery to defense counsel, as well as discussing a potential early resolution of the case. A plea offer was made with a deadline of December 6, 2013. Prior to that deadline, SAUSA

Mygrant informed defense counsel that, prior to the stop of Mr. Martinez-Rodriguez's vehicle, a search warrant had been obtained to gain location information from his cell phone. Defense counsel were informed that the search warrant contained information from a CI regarding his/her contact with defendant, but were unable to share the extent of this information with Mr. Martinez-Rodriguez, including the contents of the warrant and related reports.

Defense counsel were provided with a copy of the search warrant on Friday, December 6, after rejecting the plea offer on Mr. Martinez-Rodriguez's behalf. Due to the timing of discovery, and with some discovery still anticipated, a full briefing of the issues will be provided closer to the evidentiary hearing which is scheduled on January 6, 2014, on a date to be determined in a scheduling meeting with government counsel.¹

Grounds for the Motion to Suppress Evidence

In this Motion, the defendant moves for an order suppressing evidence obtained during the September 25, 2013, stop of his vehicle, the subsequent warrantless search and seizure of evidence from his vehicle and person, in violation of defendant's rights under the United States Constitution, Amendment IV, and any statements obtained subsequent to the unlawful stop and warrantless search and seizure above, as those statements are

¹Defense counsel is not contending that there has been any delay in the discovery process, rather a delay due to the government's concern about releasing certain information prior to the plea offer deadline, concomitant with speedy trial deadlines.

fruits of the unlawful seizure of defendant and the unlawful search of defendant and are in violation of defendant's rights under the United States Constitution, Amendment IV. Warrantless searches and seizures are presumed to violate the Fourth Amendment; the government bears the burden of proving an exception to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

In addition, defendant moves this Court for an order suppressing any and all evidence obtained from the execution of the search warrant dated September 18, 2013.² That warrant authorized the "Release of Cell Site and Precision Location Information" from Target Telephone Number One 971-344-2372, based on information provided by a CI that Mr. Martinez-Rodriguez would be traveling south, to Southern California or Mexico, to "reload." The warrant was unlawfully obtained under provisions for Pen Register Orders (Or.Rev.Stat. 165.657 et seq. and 18 USC 2703(c), 3121-3126), and further lacks probable cause "to believe that the crimes being investigated are prosecutable in Clackamas County, Oregon."

As indicated above, Defendant requests leave to file a Memorandum of Law in support of his Motion to Suppress, once defense counsel are able to consult with defendant regarding discovery which was previously unavailable to him until the expiration of the

²A copy of the search warrant will be submitted separately under seal.

plea offer on December 6, 2013, and further so that defense counsel can fully review recently received discovery in this case.

RESPECTFULLY SUBMITTED this December 9, 2013.

/s/ Ellen C. Pitcher

Ellen C. Pitcher

Alison M. Clark

Of Attorneys for Defendant